SUBJECTS.

Association had a cultivated area of 21,915 acres, on which about 20,000 coolies were employed. The peculiar position of the district, unlike other places in Travancore, was that the whole of the labour force was recruited from British India. The Association had been for years considering the question and also studying the working of fresh legislation in other districts; and they rather feared the effects of it. The Madras Labour Act, I of 1903, had the peculiarity of being *optional*, and from the way it had worked in the districts where it was introduced, the Association were of the decided view that they were better off as they were. The coolies being a conservative class, the law had the effect of frightening away a certain amount of labor. The least degree of fear was enough to spoil the situation. He therefore said that it was undesirable to add to the existing labor laws.

Dewan.—How do the Members in the other Planting districts feel in the matter?

Mr. Cook.—I think we do require some kind of legislation. The Kanan Devan Planters' District is at one end of the country. I do not know what the other Associations think about the matter; but speaking for myself, I believe that we ought to have legislation. If the question is not one of urgency now, it will become so very soon. In the district where I am, we do not find much difficulty in getting labour.

Dewan.—What about the effect of fresh legislation in frightening the coolies?

Mr. Cook.—I do not see why the coolies should be frightened. We really want legislation against each other. At present, if a cooly takes tea from our factory, we try to have him prosecuted. What he does is he runs away to another district.

Mr. Westaway.—My opinion is the same as Mr. Cook's. I have no instructions from my Association, but I think legislation is necessary in our side of the country. The Kanan Devan Planters' Association is very uniquely situated. They are all by themselves. In our place, if a cooly bolts away, there is no means of recovering his debts except civilly.

Dewan.—Even if we have fresh legislation, it will, I take it, only be optional as elsewhere. In that case, it will not apply to Mr. Wright's district, if it is not wanted there.

Mr. Westaway.—We want the Regulation throughout the State. The Kanan Devan Planters do not employ any of the Malayali coolies. They find their labour from British India.

Dewan's reply.—Noted.

38. The need for amending the Court Fees Regulation.

Mr. Kochukunju Kurup (Member, Kunnathur taluk) dwelt at length on the hardships experienced by the people on account of the recent Court Fees Regulation. If the Government were of opinion that the Regulation had reduced the number of frivolous prosecutions and unnecessary complaints, he said that the difficulties experienced by the poor people in representing their real grievances had multiplied themselves out of all proportion to the advantage gained. In the field of

LIBRARY ARCHIVES Kerala Legislative Assembly

SUBJECTS.

criminal law, many a crime was not complained of on account of the fees charged in the various stages of a criminal prosecution. Again, in a civil case, a man had to tender a fee for the return of a document produced in pursuance of an order of the Court, as evidence in a case in which he was in no way concerned. Also, fees were now for the first time charged for many an item in the course of a civil suit. Applications for the registry of *puduval* lands had considerably fallen in number on account of the unwillingness of poor ryots in risking their money. That was due to the general poverty of the people and was a loss to the Government. When a demand notice was issued to a person for the tax on a property in the actual enjoyment and possession of another and for which the latter was bound to pay the tax, the former was forced to pay the same, as he had to spend a larger sum in certain cases as court fee to bring the actual circumstances to the notice of the authorities.

The Member therefore prayed that the former state of affairs should be restored, repealing the Amending Court Fees Regulation, VI of 1087.

Mr. C. K. Krishna Pillai (Member, Mavelikara taluk) said that there was no uniformity in the interpretation of certain sections of the Court Fees Regulation.

(1) *Section 4, Clause* v, stated that the market value of a land or garden in cases of dispute should be taken to be ten times the annual gross profits of such land or garden where it was capable of yielding annual profits, minus the assessment paid, if any, to the Sirkar. In interpreting that section, certain Courts included in the market value ten times the annual gross profits and also the value of all the non-bearing trees, tanks and wells in the land and calculated the court fees on the total amount [Orders in C. Nos. 381 and 689 of 1087 of the Mavelikara Munsiff's Court]. Certain other Courts had held that the value of the non-bearing trees should not be calculated in estimating the market value. [Order in O. S. No. 79 of 1082 in the Quilon District Court.] The Member requested that it should be ruled that the market value should include only ten times the annual gross profits.

Further, in estimating the market value of lands containing only non-bearing trees, the value of such trees and of any tanks and wells was taken into consideration. He requested that, in those cases also, the market value should be estimated at ten times the *tharapattom* (ground rent). The market value was thought by some of the Courts to be the actual value for which the land could be sold. The Member said that it was a mistaken notion which had to be rectified as early as possible.

(2) The High Court had ruled that, when the jenmom right over a property already hypothecated was auctioned, the court fee to be paid for cancelling the auction sale was calculated on the amount of the market value of the property minus the amount of the hypothecation deed. But in cases where such jenmom right was conveyed by a sale deed, the Courts did not follow the spirit of the above ruling but required the parties to pay the fees on the amount of the hypothecation deed also. That was very hard. The Member requested that the decision of the High Court in the case of auction sales should be followed

LIBRARY ARCHIVES Kerala Legislative Assembly

SUBJECTS.

in the case of ordinary sales also and the court fees regulated accordingly.

He then prayed that the following applications and petitions be exempted from the payment of court fees :—

(1) All applications and petitions in cognizable cases made by the complainants or the accused during the course of the trial. At present only the complaints were exempted.

(2) Applications made by persons, who were not parties to a suit, for the return of documents in original or other articles produced by them in pursuance of an order of the Court.

(3) Petitions in the nature of reminders praying for speedy action being taken on a previous petition or application.

(4) Applications made by persons in respect of stolen property or other articles entrusted to them for safe custody as third party.

(5) Applications made by acquitted accused for the return of articles taken from their possession.

(6) Petitions informing a Magistrate that a cognizable offence was about to be committed.

(7) Petitions bringing to the notice of a Government officer the inconveniences and difficulties brought about by his inaction where he ought, by law, to take action independently of such petition.

(8) Compromise petitions in criminal cases.

(9) Complaints to Magistrates in cases of assault under Section 352 of the Penal Code.

Mr. S. Shadaksharasundaram Pillai (Member, Shencotta taluk) said that the people were put to much loss and inconvenience owing to the want of uniformity in the interpretation of the Court Fees Regulation, and as instances, he mentioned the following, which had come to his knowledge :—

(1) The Government had so kindly allowed *free* passes being issued to the agricultural ryots for the removal of green manure and timber for agricultural implements. But the application to the Forest officer for the grant of such passes, and another presented to the Proverthikar, at the instance of the Ranger, were each charged with a fee of 14 chs. The ryots thus had to pay 1 Re. as court fees for a cart-load of manure &c., which was supposed to be allowed free. The Member felt sure that it was not the intention of the Government that fees should be levied on such applications.

(2) Court fee was being levied on applications to the Revenue authorities in connection with Land Records Maintenance, the registry of *puduval* lands, certificates in respect of registered lands, and the like. Under the Regulation, such applications were not required to be stamped.

LIBRARY ARCHIVES Kerala Legislative Assembly

SUBJECTS.

(3) The procedure adopted in the several Courts was also not uniform and that would be evident if a statement of the fees levied under the different sections were called for and examined.

(4) The Members of the Assembly continued to be Members till the next session according to Rule 11 of the Assembly Rules. Their communications to the Government during the period were being classed as petitions and court fees insisted on them. The Member knew of a case in which the Government held that no stamp was necessary in such cases. He prayed that it might be declared so and the benefit of the exemption allowed to all.

(5) Under Clause 1 (*b*) of Schedule II to the Court Fees Regulation, court fee was prescribed only for *complaints* or *charges* to the Magistrate in non-cognizable cases. The Regulation specifically exempted complaints in cognizable cases. But the Courts were levying fees on *all* petitions presented by the parties and witnesses at any stage of the trial in both cognizable and non-cognizable cases. Under the Regulation there was no justification for the levy and the preamble also went to support the same view.

(6) In cases where a witness produced a document in obedience to the summons from a Court, his subsequent application for the return of that document was now charged with a fee of half a rupee.

The Member requested that the matter be looked into and the grievances of the people redressed, by issuing clear rules for the guidance of the Courts, and if necessary, by modifying the Regulation. In any case, it was obvious that there should be uniformity in the interpretation of the Regulation.

Dewan's reply.—Noted.

(2) Criminal Justice.

39. Reforms in the administration of Criminal Justice.

Mr. P. Padmanabhan Tampi (Member, T. I. C., Padmanabhapuram) observed that the administration of Criminal Justice was an index to the administration of a State. The administration of Civil Justice related always to property only, whereas that of Criminal Justice related to life, reputation and property as well. But, in Travancore, he regretted to observe that the administration of Criminal Justice was being considered only secondary to that of Civil Justice. He pointed out that only graduates-in-law, having some experience either in the Courts or at the bar, were being appointed as Munsiffs and Judges, whereas people who had a bare law qualification, such as Magistrate's Test, Criminal Higher or Lower, Pleadership Test, &c., were being appointed as Magistrates. No experience in the Judicial Department was deemed necessary for a Magistrate. He, therefore, suggested that graduates-in-law of sufficient standing only should be appointed as Magistrates.

Next, he proposed that the judicial and executive functions be separated. It was gratifying that Stationary Magistrates without executive powers were being appointed now in

LIBRARY ARCHIVES Kerala Legislative Assembly